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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/585,407

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Tsuneo Nakata

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EXAMINER

LEE, CHI HO A

ART UNIT

PAPER NUMBER

2472

MAIL DATE

DELIVERY MODE

09/15/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/585,407	Applicant(s) NAKATA, TSUNEO	
	Examiner Andrew Lee	Art Unit 2472	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 June 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-3, 5-12, 14-18 and 20-25 is/are rejected.
- 7) ☒ Claim(s) 4, 13 and 19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 7, 9, 10, 16, 22, 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Curtis U.S. Patent Number 5,247,464.

Re claims 1, 9, 10, 16, 24, fig 4 (reception node) teaches MS/TRCV 30 (a receiving means) for receiving transmitted packet wherein the packet includes source address 56 (affixing probe information for uniquely identifying...said group packet); memory 54 (a recording means) for recording the arrival time of the received packet; processor 34 (a determining means; a calculating means) for determining the source address of the receive packet and calculating the speed of the packet based on the difference between the arrival times of the packets (See col. 2, lines 5-42 & col. 6, lines 30 +).

Re claims 7, 22, refer to claim 1, wherein the transmitting node includes a packet assembler (not shown: a grouping means) for assembling packets with a source address (affixing probe information).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 2472

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 2, 3, 8, 11, 12, 17, 18, 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Curtis U.S. Patent Number 5,247,464 in view of Heiner et al PG-PUB 2004/0203827.

Re claims 2, 3, 8, 11, 12, 17, 18, 23, Curtis fails to teach selecting a path based on the communication load. However, Heiner et al teaches selecting the path based on the determined weight (communication load). One skilled in the art would have been motivated to select a path based on the weight of the path for reliability. Therefore, it would have been obvious to one ordinary skilled to have combined the teachings.

Claim 5, 6, 14, 15, 20, 21, 25, are rejected under 35 U.S.C. 103(a) as being unpatentable over Curtis U.S. Patent Number 5,247,464 in view of PG-PUB 2003/0154301.

Re claims 5, 6, 14, 15, 20, 21, 25, Curtis fails to teach "generating one dummy packet ...within a predetermined time.". However, '301 teaches after predetermined period of time, an idle packet (dummy packet) is generated for synchronization [0069]. One skilled in the art would have been motivated to generated idle packets for synchronizing for lost packets. Therefore, it would have been obvious to one ordinary skilled to have combined the teachings.

Allowable Subject Matter

Art Unit: 2472

5. Claims 4, 13, 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

In combination with claims 1 and 4; 10 and 13; 16 and 19, prior art fails to teach the claimed calculating means for computing the communication speed.

Response to Arguments

6. Applicant's arguments filed 6/17/10 have been fully considered but they are not persuasive.

Re Claim 1, Applicant argues that Curtis fails to teach, "grouping at least two of received packet", probe information for uniquely identifying said group packet to each packet of the packet group", "determining whether the probe information is included in said received packet", and "calculating a communication speed based upon a difference between the arrival times of the packets".

Examiner disagrees.

As set forth in the last OA, "grouping at least two of received packet" is associated with the designated end point for determining the distance. Curtis teaches the first and second detectors that detect the arrivals of the first and second packet by detecting the preamble of the corresponding packets. Hence, the "grouping of the at least two of receive packet" is associated with the preamble in the packet (probe information) that uniquely identifies the source and destination node for each packet.

Art Unit: 2472

Curtis further teaches that the speed at which the packet travels on the segment can be determined by knowing the length of the segment and the time it takes for the packet to traverse the segment (See col. 4, lines 10-15).

Re Claim 25, idle packets are dummy packets. Using dummy or idle packet would have not matter as long as the arrival time of the packet is determined.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Lee whose telephone number is 571-272-3130. The examiner can normally be reached on Monday to Friday from 8:30AM to 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Trost can be reached on 571-272-7872. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2472

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrew Lee/
Primary Examiner, Art Unit 2472